

REMARKS

This is a full and timely response to the outstanding final Office Action mailed July 12, 2006 (Paper No.8). Upon entry of this response, claims 75-88 and 94-103 are pending in the application. In this response, claims 77, 84, 97, and 99 have been amended, claims 100-103 have been added, and claims 52-55 and 63-74 have been cancelled. Applicants respectfully submit that the amendments and new claims are such that no new search is required. Applicants therefore request that the amendments being filed herewith be entered and request that there be reconsideration of all pending claims.

1. Rejection of Claims 52, 63, 67, 71, 75, 78, 81, 82, 85, 87, 88, 94, 96, and 98 under 35 U.S.C. §103

Claims 52, 63, 67, 71, 75, 78, 81, 82, 85, 87, 88, 94, 96, and 98 have been rejected under §103(a) as allegedly obvious over *Maxwell et al.* (U.S. 4,771,417) in view of *Smith et al.* (U.S. 3,935,392). Applicants respectfully traverse these rejections. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly, all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Rejection of Claims 52, 63, 67, and 71

Claims 52, 63, 67, and 71 are cancelled without prejudice, waiver, or disclaimer, and the rejection of these claims is therefore rendered moot. Applicants take this action merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicants reserve the right to pursue the subject matter of these cancelled

claims in a continuing application, if Applicants so choose, and do not intend to dedicate any of the cancelled subject matter to the public.

b. Rejection of Claims 75 and 82

Applicants respectfully submit that claims 75 and 82 are allowable for at least the reason that the proposed combination of *Maxwell et al.* in view of *Smith et al.* does not disclose, teach, or suggest at least the feature of “responsive to the detecting, collecting data describing one or more subsequent transients that occur over a first predetermined length of time” as recited in claims 75 and 82.

Maxwell et al. discloses a modem that “constantly monitors the number of errors in data transmission as reflected by the number of retransmitted data frames.” (Col. 20, lines 29-35.) The modem also calculates a retransmit frame ratio. (Col. 20, lines 1-10.) The Office Action alleges that these data errors correspond to transients, so that monitoring retransmitted frames correspond to “detecting a transient” as recited in claims 75 and 82.

Even assuming, *arguendo*, that data errors correspond to transients, the only error information that *Maxwell et al.* collects is the number of retransmitted frames. In contrast, Applicant’s invention as defined claims 75 and 82 collects “data describing one or more subsequent transients.” The number of errors counted in *Maxwell et al.* does not **describe** any particular error. Nor does the number of errors describe one or more **subsequent** errors. Furthermore, *Maxwell et al.* does not disclose, teach, or suggest that the counting occurs **responsive to** detecting a transient. To the contrary, *Maxwell et al.* teaches that “the modem constantly monitors the number of errors in the data transmission.” (Col. 20, lines 30-35.)

Smith et al. contains no discussion at all of “collecting data describing one or more subsequent transients.” The dial pulse detector in *Smith et al.* detects transients and determines

whether the transients meet amplitude and timing conditions. However, the pulse detector is an analog circuit and therefore does not collect data. Furthermore, even assuming *arguendo* that the circuit of *Smith et al.* does collect data, it does not do so for transients “that occur over a first predetermined length of time.” The circuit of *Smith et al.* operates continuously on all transients.

Accordingly, the proposed combination of *Maxwell et al.* in view of *Smith et al.* does not teach at least the above-described features of claims 75 and 82. Since the proposed combination does not teach at least the above-described features recited in claims 75 and 82, a *prima facie* case establishing an obviousness rejection has not been made. Thus, claims 75 and 82 are not obvious under the proposed combination of *Maxwell et al.* in view of *Smith et al.*, and the rejection should be withdrawn.

c. Rejection of Claim 94

Applicants respectfully submit that claim 94 are allowable for at least the reason that the proposed combination of *Maxwell et al.* in view of *Smith et al.* does not disclose, teach, or suggest at least the feature of “collecting data, responsive to the detecting, said data characterizing one or more subsequent transients that occur during a predetermined period” as recited in claim 94.

Maxwell et al. discloses a modem that “constantly monitors the number of errors in data transmission as reflected by the number of retransmitted data frames.” (Col. 20, lines 29-35.) The modem also calculates a retransmit frame ratio. (Col. 20, lines 1-10.) The Office Action alleges that these data errors correspond to transients, so that monitoring retransmitted frames correspond to “detecting a transient” as recited in claim 94.

Even assuming, *arguendo*, that data errors correspond to transients, the only error information that *Maxwell et al.* collects is the number of retransmitted frames. In contrast,

Applicant's invention as defined claim 94 collects "data characterizing one or more subsequent transients." The number of errors counted in *Maxwell et al.* does not **characterize** any particular error. Nor does the number of errors characterize one or more **subsequent** errors. Furthermore, *Maxwell et al.* does not disclose, teach, or suggest that the counting ("collecting") occurs **responsive to** detecting a transient. To the contrary, *Maxwell et al.* teaches that "the modem constantly monitors the number of errors in the data transmission." (Col. 20, lines 30-35.)

Smith et al. contains no discussion at all of "collecting data...said data characterizing one or more subsequent transients." The dial pulse detector in *Smith et al.* detects transients and determines whether the transients meet amplitude and timing conditions. However, the pulse detector is an analog circuit and therefore does not collect data. Furthermore, even assuming *arguendo* that the circuit of *Smith et al.* does collect data, it does not do so for transients "that occur over a first predetermined length of time." The circuit of *Smith et al.* operates continuously on all transients.

Accordingly, the proposed combination of *Maxwell et al.* in view of *Smith et al.* does not teach at least the above-described features of claim 94. Since the proposed combination does not teach at least the above-described features recited in claim 94, a *prima facie* case establishing an obviousness rejection has not been made. Thus, claim 94 is not obvious under the proposed combination of *Maxwell et al.* in view of *Smith et al.*, and the rejection should be withdrawn.

d. Claims 78, 81, 85, 87, 88, 96, and 98

Since claims 75, 82, and 94 are allowable, Applicants respectfully submit that claims 78, 81, 85, 87, 88, 96, and 98 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988).

Therefore, Applicants respectfully request that the rejection of claims 78, 81, 85, 87, 88, 96, and 98 be withdrawn.

2. Rejection of Claims 53, 64, 68, 72, 76, 79, 83, 86, and 95 under 35 U.S.C. §103

Claims 53, 64, 68, 72, 76, 79, 83, 86, and 95 have been rejected under §103(a) as allegedly obvious over *Maxwell et al.* (U.S. 4,771,417) in view of in view of *Smith et al.* (U.S. 3,935,392) and further in view of *Frick et al.* (U.S. 5,473,676).

a. Rejection of Claims 53, 64, 68, and 72

Claims 53, 64, 68, and 72 are cancelled without prejudice, waiver, or disclaimer, and the rejection of these claims is therefore rendered moot. Applicants take this action merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicants reserve the right to pursue the subject matter of these cancelled claims in a continuing application, if Applicants so choose, and do not intend to dedicate any of the cancelled subject matter to the public.

b. Claims 76, 79, 83, 86, and 95

Since claims 75, 82, and 94 are allowable, Applicants respectfully submit that claims 76, 79, 83, 86, and 95 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicants respectfully request that the rejection of claims 76, 79, 83, 86, and 95 be withdrawn.

3. Rejection of Claims 54, 55, 58, 59, 65, 66, 69, 70, 73, 74, 77, 84, 97, and 99 under U.S.C. §103

Claims 54, 55, 58, 59, 65, 66, 69, 70, 73, 74, 77, 84, 97, and 99 have been rejected under §103(a) as allegedly obvious over *Maxwell et al.* (U.S. 4,771,417) in view of in view of *Smith et*

al. (U.S. 3,935,392) and further in view of *Frick et al.* (U.S. 5,473,676) and *Parrott* (U.S. 6,351, 533).

a. Claims 54, 55, 58, 65, 66, 69, 70, 73, and 74

Claims 54, 55, 58, 65, 66, 69, 70, 73, and 74 are cancelled without prejudice, waiver, or disclaimer, and the rejection of these claims is therefore rendered moot. Applicants take this action merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicants reserve the right to pursue the subject matter of these cancelled claims in a continuing application, if Applicants so choose, and do not intend to dedicate any of the cancelled subject matter to the public.

b. Claims 77, 84, 97, and 99

Since claims 75, 82, and 94 are allowable, Applicants respectfully submit that claims 77, 84, 97, and 99 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicants respectfully request that the rejection of claims 77, 84, 97, and 99 be withdrawn.

4. Newly Added Claims

Applicants submit that no new matter has been added in the new claims 100-103 and that new claims 100-103 are allowable over the cited references. New claims 100-103 are dependent claims. Independent claims 75, 82, and 94 are allowable for at least the reasons argued above. New claims 100-103 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicants request that the Examiner enter and allow the above new claims.

CONCLUSION

Applicants respectfully request that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 75-88 and 94-103 be allowed to issue. If the Examiner has any questions or comments regarding Applicants' response, the Examiner is encouraged to telephone Applicants' undersigned counsel.

Respectfully submitted,

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